

MONTANA LEGISLATIVE HISTORY

Chapter 33 19 83

Bill H 27 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Jan 12 ☒ C

Jan 13 ☒ C

_____ C

_____ C

Date Out Jan 13 ☒ C

S. Committee on Judiciary

Hearing Date(s) Jan 31 ☒ C

Feb 08 ☒ C

_____ C

_____ C

Feb 08 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

REREFERRED TO COMMITTEE ON TAXATION: 02/17/83
REREFERRED TO COMMITTEE ON APPROPRIATIONS: 02/19/83
DIED IN COMMITTEE

HB 27 -- KOEHNKE, SALES, ELLERD, ET AL. -- TO AMEND MONTANA'S CODIFICATION OF
UNIFORM COMMERCIAL CODE TO PROVIDE THAT THERE ARE NO IMPLIED WARRANTIES THAT CERTAIN
AGRICULTURAL SEED IS DISEASE FREE; AMENDING SECTION

INTRODUCED: 01/03/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/03/83
HEARING: 1/12/83
REPORT: 01/13/83, DO PASS, AS AMENDED
2ND READING: 01/15/83, DO PASS AYES: 90; NAYS: 1
3RD READING: 01/18/83, DO PASS AYES: 95; NAYS: 0

TRANSMITTED TO SENATE: 1/18/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/19/83
HEARING: 1/31/83
REPORT: 02/09/83, BE CONCURRED IN
2ND READING: 02/12/83 AYES: 47; NAYS: 1
3RD READING: 02/15/83 AYES: 49; NAYS: 0

RETURNED TO HOUSE: 2/15/83

TRANSMITTED TO GOVERNOR: 02/21/83
SIGNED: 2/24/83, CHAPTER 33

HB 28 -- KITSELMAN -- TO REQUIRE AN INFORMATIONAL HEARING PRIOR TO THE CONSTRUCTION OF
OCCUPANCY OF ANY FOSTER OR BOARDING HOME OR COMMUNITY RESIDENTIAL FACILITY LICENSED BY
THE STATE; AMENDING

INTRODUCED: 01/03/83
REFERRED TO COMMITTEE ON HUMAN SERVICES: 01/03/83
HEARING: 1/12/83
REPORT: 01/20/83, DO PASS, AS AMENDED
2ND READING: 01/22/83, DO PASS AYES: 68; NAYS: 25
3RD READING: 01/25/83, DO PASS AYES: 77; NAYS: 22

TRANSMITTED TO SENATE: 1/25/83
REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY: 01/26/83
HEARING: 3/2/83
REPORT: 03/05/83, BE NOT CONCURRED IN. REPORT ADOPTED.
BILL KILLED

HB 29 -- NORDTVEIT -- TO EXTEND TO ALL TAXPAYERS THE EXCLUSION OF INTEREST INCOME FOR
INCOME TAX PURPOSES (TO A MAXIMUM OF \$800) WHICH IS NOW AVAILABLE TO TAXPAYERS 65
YEARS OF AGE OR OLDER; AMENDING SECTION

INTRODUCED: 01/03/83
REFERRED TO COMMITTEE ON TAXATION: 01/03/83
HEARING: 1/19/83
DIED IN COMMITTEE

HB 30 -- LORY -- TO DELETE THE REQUIREMENT THAT A SCHOOL TEACHER OR SPECIALIST MUST
SUBSCRIBE TO AN OATH AS A QUALIFICATION FOR CERTIFICATION; AMENDING SECTIONS

INTRODUCED: 01/03/83

REP. RAMIREZ noted there was a problem in the bill concerning the youth who is over 18 and under 19 years of age.

REP. EUDAILY questioned the suspension of the driver's license. What if a youth is picked up for being drunk yet was not driving? REP. MANUEL replied that would be a different situation in which probably a \$50.00 fine would be charged.

REP. CURTISS wondered if it was fair to hold the parent in contempt of court when it is the youth who has failed to pay a fine. TURCOTTE stated unless there is complete cooperation of the parent, problems will occur. Many parents do not care what their child does.

REP. J. BROWN asked how the bill might affect HUFSTEAD's program. He replied the original bill would not affect the program. CURT CHISHOLM, Department of Institutions, stated the bill as written is silent on who is responsible for payment for alcohol treatment. He stated that his office would bring in language to the committee about the payment for an offender's attendance of Alcohol Treatment Programs. The hearing on the bill was closed.

HOUSE BILL 27

REP. KOEHNKE, sponsor, stated this bill would amend Montana's Codification of the Uniform Commercial Code to provide that there are no implied warranties that certified agricultural seed is disease free. In the 1979 session, REP. ELLERD sponsored a bill that stated that in the sale of livestock there are no implied warranties that the livestock are free from sickness or disease. It was realized it is hard to guarantee that the livestock would not be ill or free from disease. That bill passed. This bill is similar to the Livestock Bill. It states that in the sale of certified agricultural seed, there is no implied warranty that it is disease free. Without this type of law, the farmer is subject to many lawsuits.

JOHN SULLIVAN was in favor of the bill. He has had experience as an attorney representing the state in livestock cases. In 1977, there were several incidents of diseased seed potatoes. The liability faced by the grower of the seed potatoes was huge. One pound of seed potatoes can produce 20 pounds of seed. A diseased or slightly infected potato, therefore, can produce a large number of seeds, which would also be diseased.

The bill would eliminate implied warranties in the sale of certified agricultural seed. Insurance on seed quality is not usually purchased by the farmer because of the great expense of the insurance.

A disease in seed potatoes may be difficult to detect. When the seed potato farmer harvests the seed potatoes, he feels he has a good crop to sell. However, if bacteria grows in the potatoes or if the buyer does not properly care for the seeds, the crop may be diseased. Ringrot, a bacterial disease, can go through seven generations of seed potatoes before it actually comes out and this is very difficult to prevent.

The UCC contains provisions that allows the disclaimer of an implied warranty if the disclaimer is set forth in the contract in proper form and in large enough type. An attorney often has a hard time trying to make that disclaimer hold up in court. The federal law, The Magnuson Moss Warranty Act, exempts from its provisions concerning implied warranties from the sale of seeds. Montana will be a test state if this bill is passed.

Disclaimers of warranties is the custom in all of the seed industry. Stores that sell seed will only give the buyer the amount of money the seed actually cost if such seed is proven defective.

SULLIVAN further stated there is a potential liability problem for the state. An attorney could argue that the state certification program is liable if the grower's liability is removed. Amendments were given to the committee concerning this aspect of the bill. EXHIBIT B. STEVE BROWN, was also a proponent of the bill. He has been involved in seven cases concerning seed potato farmers.

BROWN stated that the growers have borrowed against the future of a crop. Financial problems arose for his clients when their crops were diseased and could not be used for seed. Growers are now more cautious.

He warned the committee to consider what would happen to the Montana farmer if this was the only state that passed the law. People from other states could file suit. Most of his lawsuits were filed from farmers from the state of Washington. This puts the Montana farmer at a disadvantage. The bill should reflect that it is only in effect if the other state has the same law.

There were no other proponents.

There were no opponents.

In closing, REP. KOEHNKE stated that things have changed since he first began growing seed potatoes. He can still sell his seed potatoes if they are diseased, but only to the commercial market at a much lower rate. If lawsuits or the threat of lawsuits continue, it will place the seed potato farmer in a position that he will no longer raise the crop.

REP. SEIFERT asked if the bill were passed would it pass liability to the state. SULLIVAN felt it would not, except as construed by an attorney. REP. SEIFERT further asked if the bill passed would it affect the sale price of the crop. It was replied no. Most seed potato farmers are now using a contract for the sale of their crops which disclaims all implied warranties. EXHIBIT C.

REP. KEYSER asked if there has been an increase in lawsuits in the last ten years. It was replied yes. Eighty percent of the potatoes grown in Montana are grown for sale as seed.

REP. KEYSER asked about the Seed Growers Association. REP. KOEHNKE replied he has been a member of the association. He stated that in order to have a seed potato crop certified, there are three or four inspections of the crop while it is in the field. There are also inspections of the storage bins, trucks they are shipped in, etc. There are sanitation rules the growers must follow also. If standards are not met, the crop is not certified and must be sold on the commercial market.

SULLIVAN stated that the diseases most common to seed potatoes are viral and bacterial. If there is a problem with hard seeds, like wheat it is generally genetic. REP. RAMIREZ asked about the detectability of diseases in other seeds. MIKE KOEHNKE stated that is often a problem detecting when or if a crop has a disease. He stated the Grain Growers want to be included in the bill.

It was further stated that the insurance policy covering seed potatoes is very high and few farmers can afford it.

The hearing on the bill ended.

Exhibit B

HB 27

1/12/83

AMENDMENTS TO HOUSE BILL 27

(Introduced Bill)

* * * * *

1. Title, Line 6:

Following: "WARRANTIES THAT"

Strike: "CERTIFIED AGRICULTURAL"

2. Title, Line 7:

Following: "SEED"

Insert: "FOR PLANTING"

3. Page 2, Lines 22-24:

Following: "sales of"

Strike: "either botanical or vegetative types of
certified agricultural seed that, has been
produced and certified pursuant to Title 80,
chapter 5, part 3,"

Insert: "any seed for planting (including both botani-
cal and vegetative types of seed, whether
certified or not)."

UNIVERSAL SEED POTATO CONTRACT FOR SALE

15127
1/12/83

Form 8203

CONTRACT INCLUDES REVERSE SIDE HERETO

1. DATE OF ISSUE _____ 2. ORIGINAL ISSUER: _____ Seller
(Check one) _____ Buyer 3. CONTRACT NO. 132

This is a legal CONTRACT FOR SALE for either a present or future sale in consideration of the mutual promises hereinafter, between the SELLER,

Seller's Business Name _____ Address _____ City _____ State _____ Zip _____ Telephone Number _____

hereinafter referred to as SELLER, who has the legal authority to sell or offer to sell the hereinafter described seed potatoes (either crops, farm products or goods) and agrees to sell according to all the terms and conditions of this agreement, WHICH SHALL BE NULL AND VOID UNLESS SIGNED BY BOTH PARTIES HERETO AND RETURNED TO THE ORIGINAL ISSUER WITHIN FIFTEEN (15) DAYS AFTER THE HEREBEFORE CONTRACT DATE OF ISSUE (ITEM NO. 1), PROVIDED HOWEVER, NOTWITHSTANDING ITS ENFORCEMENT AND FULL EFFECT WITH RESPECT TO GOODS FOR WHICH ANY PAYMENT HAS BEEN MADE AND ACCEPTED, OR WHICH GOODS HAVE BEEN RECEIVED AND ACCEPTED, and the BUYER,

Buyer's Business Name _____ Address _____ City _____ State _____ Zip _____ Telephone Number _____

hereinafter referred to as BUYER, who hereby agrees to accept and pay for in-full for the hereinafter described seed potatoes (either crops, farm products or goods) according to all the terms and conditions of this agreement, including REVERSE SIDE HERETO, the FULL PAYMENT PROMPTLY CLAUSE, the LATE PAYMENT CLAUSE, the LIMITATION AND EXCLUSION OF CERTAIN WARRANTIES, the LIMITATION OF CONSEQUENTIAL DAMAGES AND REMEDIES, the MISCELLANEOUS CONDITIONS OF SALE, and all of the other provisions hereto as follows:

4. SEED STATE OF ORIGIN	5. POTATO VARIETY or NO.	6. FIELD/LOT IDENTIFICATION	7. SEED CLASS/GENERATION
8. TAG COLOR	9. STATE SEED GRADE	10. MINIMUM TUBER SIZE	11. MAXIMUM TUBER SIZE
12. TRADE TERMS OF SALE: (See P.A.C.A. Regulation Sec. 46.43.) SOLD AS: _____		13. _____ BAG SIZE _____ lbs. _____ BULK SHIPMENT	
14. TYPE OF CARRIER:	15. QUANTITY of CWT CWT	16. F.O.B. UNIT PRICE per CWT \$ /CWT	17. TOTAL F.O.B. PURCHASE PRICE \$
18. TERMS OF DISCOUNT:		18(a). LESS DISCOUNT per CWT \$ /CWT	18(b). LESS TOTAL DISCOUNT \$
19. FREIGHT: Arrangements and Responsibilities:		19(a). FREIGHT COST per CWT \$ /CWT	19(b). TOTAL FREIGHT COST \$
		20(a). TOTAL COST per CWT \$ /CWT	20(b). TOTAL AMOUNT \$
21. The agreed DOWN PAYMENT SCHEDULE—		22. 1st Down Payment per CWT \$ /CWT	22(a). DATE DUE 1st Down
		22(b). 1st Down Payment Amount \$	
		23. 2nd Down Payment per CWT \$ /CWT	23(a). DATE DUE 2nd Down
		23(b). 2nd Down Payment Amount \$	
24. BALANCE DUE — FULL PAYMENT PROMPTLY — Full payment is due within TEN (10) DAYS after the day on which the said seed potatoes are accepted at delivery by the receiver with respect to each tender or within TEN (10) DAYS after the Date of Invoice, whichever is the later;			24. BALANCE DUE \$

25. The agreed SHIPPING-POINT is — _____ ;

26. The agreed DELIVERY-POINT is — _____ ;

27. The agreed SHIPPING-DATE(S), as planned, is — _____ , subject to available transportation and related weather, and the total and final shipment shall be completed no later than _____ ;

NOTICE TO BUYER & SELLER: CONTRACT TERMS AND CONDITIONS CONTINUE ON REVERSE SIDE HERETO AND ARE PART OF THIS AGREEMENT WITH FULL-FORCE AND EFFECT.

SELLER hereby agrees that he has READ BOTH SIDES OF AGREEMENT and agrees to and accept the terms and conditions hereto, including the EXPRESSED REPRESENTATIONS, RESPONSIBILITIES TO PERFORM AND REMEDIES as set forth.

BUYER hereby acknowledges that he has READ BOTH SIDES OF THIS AGREEMENT and agrees to and accepts the terms and conditions hereto, including the LIMITATION OF WARRANTIES, CONSEQUENTIAL DAMAGES AND REMEDIES as set forth.

Seller's Signature _____

Buyer's Signature _____

Business Name _____

Business Name _____

CONTRACT CONTINUED ON REVERSE SIDE

CONTRACT CONTINUED ON REVERSE SIDE

REVERSE SIDE OF THE UNIVERSAL SEED POTATO CONTRACT FOR SALE

TERMS AND CONDITIONS CONTINUED FROM FRONT SIDE — WITH FULL-FORCE AND EFFECT —

29. The agreed LATE PAYMENT CHARGES —

Notwithstanding the laws of any State or Federal law with respect to late payment charges, all accounts not paid-in-full as defined by the hereabove Item No. 24, will be subject to a LATE PAYMENT CHARGE equal to the maximum amount or rate permitted by law. If not otherwise prohibited, a LATE PAYMENT CHARGE will be imposed on the unpaid balance of all past due accounts, less the amount of payments received and any credits, at an ANNUAL PERCENTAGE RATE OF TWENTY-ONE PERCENT (21%), this is a periodic rate of 0.0575 percent per calendar day, calculated ten (10) days after the day on which the said seed potatoes are accepted at delivery by the receiver with respect to each tender or within ten (10) days after the Date of Invoice, whichever is the later, and until full-payment and all billed LATE PAYMENT CHARGES have been received by the seller. If full-payment is received within the 10 days after the said seed potatoes were accepted per tender or as otherwise provided, no LATE PAYMENT CHARGES will be imposed. Payments are applied to billed LATE PAYMENT CHARGES, next to old purchases, and then to newly unbilled purchases. If twenty-one percent (21%) is not allowed by the respective State law, then the maximum permitted amount or rate will be imposed accordingly.

30. The agreed EXCLUSION AND LIMITATION OF CERTAIN WARRANTIES —

Due to the fact that seed potatoes are: perishable vegetative tuber-seeds; unstable under certain conditions; easily contaminated or damaged through handling, shipment, storage, cutting, treating or planting; devitalized or weakened by mishandling or planting during unfavorable or moisture conditions. And because the handling, use, sanitation, cropping, germination, quality after shipping, and physical possession of the seeds are far beyond the control of the producer, SELLER, shipper or regulatory inspectors, including the Federal-State Inspection Service, State Seed Certification Agency, State Department of Agriculture, the following EXCLUDED AND LIMITED WARRANTIES ARE OFFERED FOR THE SEED POTATOES SOLD BY THIS AGREEMENT:

- a) The SELLER and the producer represent that the seed potatoes sold and to be shipped by this agreement conforms to the label (seed tag) description as required by the Seed State of Origin and/or Federal-State Inspection Laws, and will conform to the requirements specified in the above Items Number 4 through 13 of this agreement; and
- b) THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF. THE SELLER AND THE PRODUCER MAKE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM ANY LATENT POTATO DISEASE, VIRUS OR DISORDER OF ANY NATURE, OR OTHERWISE, AND IN ANY EVENT LIABILITY FOR BREACH OF ANY WARRANTY OR CONTRACT WITH RESPECT TO SUCH SEEDS IS LIMITED TO THE ACTUAL PURCHASE PRICE, AS PER TRADE TERMS OF SALE, ITEM NO. 12 HEREBEFORE.

31. The agreed LIMITATION OF CONSEQUENTIAL DAMAGES AND REMEDIES —

ANY DAMAGES ARISING OUT OF THIS CONTRACT SHALL BE LIMITED IN ALL EVENTS TO THE RETURN OF THE ACTUAL PURCHASE PRICE PAID AS PER TRADE TERMS OF SALE FOR SUCH SEEDS ON THAT PORTION OF THE SEED POTATOES ON WHICH A COMPLAINT MAY ARISE. THE SELLER OR PRODUCER SHALL NOT BE LIABLE FOR PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. THE RETURN OF THE ACTUAL PURCHASE PRICE PAID AS PER TRADE TERMS OF SALE FOR SUCH SEEDS IS THE EXCLUSIVE AND SOLE REMEDY AVAILABLE TO THE BUYER OR USER OF THESE SEED POTATOES.

32. The agreed MISCELLANEOUS CONDITIONS OF SALE —

- a) CURRENCY. All prices, amounts and payments herein refer to and are payable in UNITED STATE OF AMERICA DOLLARS;
- b) TRADE TERMS AND DEFINITIONS. The P.A.C.A. "definitions" (Sec. 46.2) and "trade terms and definitions" (Sec. 46.43) of the official Regulations Under the Perishable Agricultural Commodities Act of 1930 as amended (issued under Sec. 15, 48 Stat. 537; 7 U.S.C. 499a) in effect at the time of the Date of Issuance of this agreement, shall be part of this CONTRACT FOR SALE and shall be binding upon the parties and have full-force and effect. The SELLER and the BUYER are both chargeable with having knowledge and skill peculiar to the said sections of the P.A.C.A. Regulations;
- c) FUTURE SALE BASED UPON WINTER TEST RESULTS. When the future sale of the said seed potatoes are subject to certain post-harvest winter test results or inspection tolerances, and should the said seed potatoes fail such test or tolerances, then the BUYER shall have the right to terminate and end this agreement without breach or recourse against either party, and furthermore, the BUYER shall have the right to receive full refund promptly, without interest, upon request for any and all money paid for the said seed potatoes;
- d) LIMITATION OF PERFORMANCE—REFUND. The SELLER or producer shall not be liable, or breach, except to fully refund promptly, without interest, any and all money received as partial or full-payment for the said seed potatoes, for failure to perform or deliver tender pursuant to this agreement when such failure is caused by: (1) crop rejection or disqualification by an official State Seed Certification Agency whatever the cause; (2) shipping or transportation related stoppages, damages, strikes, accidents or mishaps, fires, thefts, or failure to perform as per contract-of-haul; or (3) Acts of God or natural disasters, storms, floods, frost or freeze, hail, disease, virus, pathogens, fires or other circumstances beyond the SELLERS or producers control relating to the said seed potatoes, either as crops, farm products in storage, or goods;
- e) OFF-SIZE TOLERANCES. Notwithstanding the Seed State of Origin regulation regarding off-size tolerances for the respective grade (Item 9 above), and if not otherwise agreed, (1) FOR UNDERSIZE: 3% for potatoes in any load lot which fail to meet the required or specified minimum size except that 5% shall be allowed when the minimum size specified is 2 1/4 inches or more in diameter; or 5 ounces in weight; and (2) FOR OVERSIZE: 10% for potatoes in any load lot which fail to meet the required or specified maximum size;
- f) WEIGHT TOLERANCES. Shipments may vary as to actual weight per load, or contract, because of carrier weight limitations, in such case, the final balance due (and freight) shall be determined by multiplying the "actual shipping-point CWT weight" times the "price per CWT"; and
- g) DELIVERY IN LOAD LOTS. Unless otherwise agreed, it is agreed and understood that shipment and delivery of the said seed potatoes shall be tendered in one or more truck/load or railcar/load lots throughout the agreed SHIPPING DATE(S) and until the total quantity is tendered. Each shipment/delivery shall be the equivalent of a separate contract. Payment may be demanded for one or more load lots upon acceptance as per this agreement or as a single payment upon final invoice as per this agreement.

33. The agreed STATUTE OF LIMITATION—TERRITORIAL APPLICATION —

- a) It is agreed that any action for breach of this CONTRACT FOR SALE or of any warranty, express or implied, must be commenced within one (1) year after the cause of action has occurred; and
- b) It is agreed that the laws of the "Seed State of Origin" as specified hereabove in Item No. 4, and none other, govern this agreement, sales transaction and seed product. If any legal action is brought, the agreed place of venue is to be the "Seed State of Origin."

34. SUCCESSORS AND ASSIGNS AGREEMENT —

This agreement shall be binding and have full-force and effect on the heirs, executors, administrators, successors and assigns of the parties hereto.

35. SEVERABILITY AGREEMENT —

If a part of this contract is found invalid by a court of law, all valid parts that are severable from the invalid parts remain in effect. If a part of this contract is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

REP. SPAETH moved the amendment as in EXHIBIT D be adopted. REP. SPAETH felt this amendment would make the bill clearer than would REP. ADDY's amendment (EXHIBIT C). Implied rule-making is confusing for the public.

REP. RAMIREZ felt the amendment as in EXHIBIT D would help clean up the bill, and therefore, supported the amendment.

The committee voted to adopt the amendment unanimously.

REP. ADDY moved DO PASS AS AMENDED. All members were in favor of the motion except REP. JENSEN, who voted no. REP. SEIFERT and REP. EUDAILY voted in favor of the bill via proxy votes.

HOUSE BILL 97

EXHIBITS E and F, proposed amendments from the Department of Institutions and from the Department of Motor Vehicles, respectively, were given to the committee for consideration.

REP. DAILY moved House Bill 98 DO PASS.

REP. RAMIREZ made a substitution motion of DO NOT PASS, which was seconded by REP. HANNAH.

REP. RAMIREZ stated he felt there were too many problems with the bill. The problem of youths that are over 18 years of age yet under 19 is not dealt with. He also felt there were other problems with the bill too numerous to mention.

A roll call vote resulted on the motion DO NOT PASS. The following Representatives voted in favor of the motion: ADDY, BERGENE, J. BROWN, CURTISS, DARKO, EUDAILY, FARRIS, HANNAH, IVERSON, JENSEN, KENNERLY, KEYSER, RAMIREZ, SCHYE, SPAETH, and VELEBER. The following Representatives voted against the motion: D. BROWN, DAILY, and SEIFERT (via proxy vote). The motion of DO NOT PASS passed by a 16 to 3 vote.

HOUSE BILL 27

REP. SCHYE moved House Bill 27 DO PASS, seconded by REP. JENSEN.

REP. SCHYE moved the bill include all types of seed. He stated farmers "bank" on what a crop will produce in the fall. This bill will help the farmer.

REP. KEYSER was in favor of the bill. He felt that the amendment offered by John Sullivan during the hearing would be the appropriate

language REP. SCHYE wanted.

REP. SCHYE withdrew his motion to include all types of seed. He then moved the committee adopt the amendment that was given during the hearing. EXHIBIT G. REP. JENSEN seconded the motion.

The motion passed unanimously.

REP. SCHYE moved DO PASS AS AMENDED, seconded by REP. KEYSER.

REP. ADDY questioned if there would be a conflict of law that would get Montana farmers into trouble when dealing with out-of-state buyers. REP. RAMIREZ felt that more and more sellers are using a contract. REP. RAMIREZ supported the bill. The issue here is simply where the risk should be placed. It is a business risk that the person who grows the seed should take rather than the person who sells it to the grower.

REP. IVERSON noted that the purchaser does not take all the risk. If there is an express warranty, the seller is liable.

Being no further discussion, the committee voted on the bill. All members were in favor of the motion DO PASS AS AMENDED. REP. EUDAILY and REP. SEIFERT voted in favor of the bill via proxies.

In other discussion, CHAIRMAN BROWN reminded the committee of the Task Force on Correction Bills that need sponsors.

REP. KEYSER moved the committee adjourn. All were in favor of the motion.

The meeting adjourned at 9:30 a.m.



DAVE BROWN, Chairman



Maureen Richardson, Secretary

STANDING COMMITTEE REPORT

January 13, 83
..... 19.....

MR. SPEAKER:.....

We, your committee on JUDICIARY.....

having had under consideration HOUSE..... Bill No. 27.....

First reading copy: White

Color:

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND MONTANA'S
CODIFICATION OF THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT
THERE ARE NO IMPLIED WARRANTIES THAT CERTIFIED AGRICULTURAL
SEED IS DISEASE FREE; AMENDING SECTION 30-2-316, MCA."

Respectfully report as follows: That HOUSE..... Bill No. 27.....
BE AMENDED AS FOLLOWS:

1. Title, line 6.

Following: "WARRANTIES THAT"

Strike: "CERTIFIED AGRICULTURAL"

2. Title, line 7.

Following: "SEED"

Insert: "FOR PLANTING"

3. Page 2, lines 22 through 24.

Following: "sales of" on line 22

Strike: "~~either botanical or vegetative types of certified
agricultural seed that has been produced and certified pursuant to
Title 80, chapter 5, part 3.~~"

Insert: "any seed for planting (including both botanical and
vegetative types of seed, whether certified or not)."

AND AS AMENDED

DO PASS

DAVE BROWN,

Chairman

Exhibit 6

1/13/83

HB 27

AMENDMENTS TO HOUSE BILL 27

(Introduced Bill)

* * * * *

1. Title, Line 6:

Following: "WARRANTIES THAT"

Strike: "CERTIFIED AGRICULTURAL"

2. Title, Line 7:

Following: "SEED"

Insert: "FOR PLANTING"

3. Page 2, Lines 22-24:

Following: "sales of" *in line 22*

Strike: "either botanical or vegetative types of
certified agricultural seed that, has been
produced and certified pursuant to Title 80,
chapter 5, part 3,"

Insert: "any seed for planting (including both botani-
cal and vegetative types of seed, whether
certified or not)."

to the Committee in writing.

Senator Towe closed by agreeing with Nick Rotering about the need for a discharge provision on page 6, line 19 in order to handle the people currently committed to Warm Springs. This was an oversight on his part. He also acknowledged John Maynards' concerns and admitted that the verdicts may be over-simplified as now drafted in the bill. He suggested this could be remedied by striking the added sentences on page 2 and reinstating the original wording. He also suggested the deletion of section 3 if page 2 was amended as he suggested.

There being no further questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 27: Representative Koehnke, sponsor of this bill, advised that its intent is to amend the Uniform Commercial Code to provide that there are no implied warranties that seed for planting is disease free. He cited a problem with potatoes as being the cause for the drafting of this bill. It is his opinion that if a farmer is attempting fraud or is negligent, he should be held liable. However, some problems are unforeseen.

PROPOSERS: Mike Koehnke, a farmer from Townsend, testified in support of this bill. He stated that the seed growers are merely trying to accomplish the same thing as the Federal Warranty Act, by requesting the enactment of this legislation.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Hazelbaker stated that the key word here is "implied." Mike Koehnke acknowledged that this was correct. Senator Mazurek then questioned the differences between certified and uncertified seed and Koehnke advised it was a requirement that seeds pass inspection. He also informed the Committee that the Potato Association of America has acknowledged the need for this law.

There being no further questions, the hearing was closed.

CONSIDERATION OF SENATE BILL 201: Senator Turnage introduced this bill to the Committee at the request of Judge Douglas G. Harkin. He then read a letter supplied by Judge Harkin which explained the problems with the current Montana immunity

NAME: Mike KOEHNKE DATE: 1/31/83

ADDRESS: TOWNSEND, MT

PHONE: 266-3401

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: HB 27

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Like livestock, agricultural seeds are
very hard to detect disease. HB 27 will
relieve the seed producer from implied
warranties just like a law in 1979 did
for the stockman.

This proposed legislation is needed and
welcomed by the seed grower. Currently
Federal law exempts "seed for planting" from
the Magnuson-Moss Warranty Act. HB
27 is designed to do the same to the
Uniform Commercial Code.

court judges, probation officers, county attorneys and others involved in the criminal justice system would be eligible.

There being no further questions, the hearing was closed.

ACTION ON SENATE BILL 303: Senator Mazurek advised that he has discovered possible adverse ramifications this bill would cause. Senator Shaw moved that SB303 be TABLED. This motion passed with Senator Mazurek voting in opposition.

ACTION ON HOUSE BILL 27: The Chairman announced that the Committee was ready to consider executive action on this bill. Senator Galt moved HB27 BE CONCURRED IN. This motion carried unanimously.

FURTHER CONSIDERATION OF SENATE BILL 262: Senator Crippen moved SB 262 DO NOT PASS. The Committee discussed the intent of the bill and how insurance agencies usually process their claims. Most Committee members felt it was not in the best interest of an insurance company for it to hold up claims and that, for the most part, there were only a few cases where these companies were making profits on interest. Most Committee members felt it would be penalizing the insured through the insurer by enacting this bill. Senator Daniels felt the bill could be beneficial but should be expanded to cover wrongful deaths. Senator Berg advised that other bills dealing with the insurance companies would be coming to the Committee and questioned if an adverse report on this bill would have an effect on future bills which the Committee feels favorable towards. Senator Crippen withdrew his original motion and then moved that SB 262 be TABLED. This motion passed with Senator Halligan voting in opposition.

FURTHER CONSIDERATION OF HOUSE BILL 53: "Grey" bills were distributed and the proposed amendments were reviewed. The Committee discussed at length the wording for figuring damages. They also debated the need for creating a civil remedy. Senator Mazurek felt HB 53 was well intended as it would take county attorney's out of the collection business. After further discussion, Senator Daniels moved that HB 53 NOT BE CONCURRED IN. Senator Crippen expressed concern for the merchants and their testimony that they need a civil remedy for bad checks. Chairman Turnage suggested changing the wording of the damages section to require a maximum amount and make damages permissible. Senator Mazurek proposed looking at a "cap" amount. The Committee discussed other possibilities at length and decided to defer action until a later time.

STANDING COMMITTEE REPORT

February 8, 1983

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 27

Koehnke (Galt)

Respectfully report as follows: That House Bill No. 27

(Third Reading)

BE CONCURRED IN

~~DO PASS~~

JEAN A. TURNAGE,

Chairman.